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A LETTER to a Livery-Man of London, truly stating and proving the Right of the Citizens, both to elect Sheriffs for London and Middlesex, and to admit them to, or refuse them to be discharged by Fine.

Epsom, June 29. 1695.

Dear Friend,

THAT I cannot personally attend the Common-Hall this next Week (as I am invited by your Letter now received) to join with you and my Fellow-Citizens, in asserting our undoubted Right to elect Sheriffs, (which is the most valuable Privilege conveyed and confirmed to us by our Charters, our Lives, Liberties, and Estates, depending upon good Juries,) gives no small Disturbance to my Thoughts; but being detained here by invincible Necessity, in Compliance with your Request, and for the Discharge of my Duty to the City, this presents you with my Sense in the Case, now so warmly debated.

How justly detestable are they, who but t'other day went about to ravish the Charters from us, and to turn this famous Corporation into a Village? How deservedly have they been stigmatized, who of late made Invasion upon the Rights of Corporations and Cities; and under a Pretence of Legal Writs and Forms, brought the greatest Bodies-Corporate in England into danger of losing the Privileges and Jurisdictions which they have for many Ages enjoy'd, not only by Charter, but by ancient Prescription and by Law?

We, or rather Heaven for us, baffled those daring Attempts; and all good Men abhor the Names of those who made them: Let us not then appear such brain-sick Fellows as to be now wheedled out of that Right by designing or deluded Men, as Violence could not then wrest from us. We ought to be very jealous of our Liberties, and early to withstand the least Attempts upon them.

What Man is secure of his Right and Property, if Law and Antient Prescription cannot preserve London in the quiet Enjoyment of its Jurisdictions and Privileges? We may not then allow any Person or Body of Men, to molest us in the Possession of our Antient Franchises, especially in that our undoubted Right of choosing Sheriffs by the Common-Hall; and it highly concerns us to lay the present Design warmly to heart.

We claim nothing now but what the City hath been in the Possession and Usage of for several hundreds of Years; and must we now, contrary thereto, have Sheriffs imposed or obtruded upon us, or fit Men discharged, without the Consent of the Electors? Nothing less is aimed at, be their Pretences never so specious; and wise Men had rather be pillaged, and robb'd of their Possessions and Rights, than trick'd and cheated of them.

Ought we not now to take the Alarm, when it shall come to be openly asserted in the Common-Council, (as it lately was) that they have such an absolute and uncontrollable Power, that they can lodg the Election of Sheriffs if they please, wholly in the Courts of Assistants of the several Companies, and so exclude all other Livery-Men; nay, that they can transfer it to any one single Person in each Ward? the Consequence whereof must be, that 26 Deputies shall appoint our Sheriffs, and so deprive thousands of Citizens of their Right to elect.

That the Right of choosing the Sheriffs of London doth by Charter, as well as by common Usage, lodg in the Citizens, in Common-Hall assembled, will be set beyond Contradiction to him who fairly examines the Case.

As it is not easy to declare the Antiquity of this Great and Honourable City, so no more are we capable to assign the Time when it first had such Magistrates and Officers, as those we stile Sheriffs; but it appears from Stephanides, who wrote in the Time of King H. 1. That even then the City had, besides all other Magistrates, yearly Sheriffs: Nay, antient Records show that William the Conqueror granted TO THE CITIZENS of London, by Authority of Parliament and by two Charters, the whole City and Sheriffwick of London. And for the Sheriffwick of Middlesex, they have always enjoyed it at the yearly Rent of 300 l. since Henry the First's time; who granted to the Citizens of London and their Heirs, the Sheriffwick of London and Middlesex. And K. John, in his first Year, granted and confirmed to the Citizens Heirs, the Sheriffwick of London and

Middlesex, with all the Customs thereto belonging, to be enjoyed by them and their Heirs, freely and quietly, honourably and wholly, by the Fee-farm of 300 l. per Ann; And in the 11th of Henry 3. They had by another Charter the said Sheriffwicks confirmed to them, with all the Things and Customs therunto belonging: Which Charters have been confirmed under the Great Seal of England, by all the succeeding Kings and Queens.

Nor were these Charters, so far as any of them relate to the Sheriffwick of London, original Grants, but only Confirmations of what the City had by Prescription enjoyed long before: For the Great Lord-Chief-Justice Hale truly said, That the Charters were only Confirmations, and not Originals; forasmuch as the City had time out of mind, enjoyed the Officers of Mayors and Sheriffs by Prescription. And the eminently learned and no less wise and highly deserving Patriot, the late Lord Commissioner Maynard, declared, That the Charters of the City do not give them a Right, but are only Master of Confirmation of the Rights which they immemorially had; and that their Officers were before Charters, and not instituted by them. Now it may not be gain said, that our Rights are only granted to the Freemen: And whatever Power some of our late Mayors, Aldermen, and Common-Council-Men have challeng'd over the Rights and Privileges of the City, it is evident they are not so much as named in any of the Charters; so that all the Interest they can with Justice or Reason pretend to, in reference to our Rights and Franchises, is merely as they are Citizens and part of the Community. For the Tenor of the Charters is, To our Citizens of London; and particularly the Right of choosing Sheriffs, is granted and confirmed to the Citizens and Freemen: For the Charter of K. John saith, We have granted to the Citizens of London, that they shall elect from amongst themselves what Sheriffs they please, and remove them when they please. This is the Tenor in which the Charters run, and the Custom and Usage of electing hath been always conformable hereunto.

And according to the Tenor of the Charters, have the Citizens from time to time elected and chosen Sheriffs. It is true, there have been some Variations, as to the Numbers and Qualifications of Freemen that have been admitted to chuse; but there never were Sheriffs constituted without the Concurrence, Choice and Confirmation of the greater part of those Freemen, who have made up the Common-Hall, (the Practice of Sir John Moore in imposing North and Rich excepted.) And from the 20th of Edw. 3. which is above 300 Years, the Sheriffs have been always chose by the Citizens in Common-Hall.

I readily grant that my Lord-Mayor, the Court of Aldermen, and Commons in Common-Council assembled, may make Laws agreeable to the Charter; however, they cannot make any that directly gain say and overthrow it: And undoubtedly that Act of Common-Council is null which is against those Liberties which belong to the Citizens by Charter and Prescription. And if an Act of Parliament, upon the Authority whereof Dudley and Empson acted in the time of H. 7. could not preserve them from being hang'd in the time of H. 8. because 'twas against the Common Right of English Men; it is very likely that an Act of Common-Council will not always secure others from being called to an account, if they trample upon the legal Privileges and Jurisdictions of the City. And I may here observe, that the Commons in Parliament assembled, May 2, 1628. did judge and declare, on the Complaint of one Legate, a certain Act of the Common-Council of London to be void and null in it self, and all Proceedings upon it to be unjust and illegal.

As the choosing the Sheriffs is wholly in the Hands and under the Power of the Common-Hall, so is the preserving our Antient and Legal Right thereto; and none can strip or deprive us of it, unless we our Selves renounce and abandon it: but surely my Fellow-Citizens will not, at this time of Day, tamely acquiesce and betray any of their Privileges, but bravely withstand

very Usurpation upon their Rights and Liberties, as they lately did in the Case of Sir Christopher Letheullier and Sir John Houlton, who being chosen Sheriffs, were upon Fines discharged by the Court of Aldermen, notwithstanding which the Common-Hall adhered to their Choice, and would not elect again; whereupon they were sworn into the Office.

Is it consistent, I beseech you, either with the Honour or Peace of the City, that the Right of electing Sheriffs should be lodg'd in the Common-Hall, and the Power of approving and disallowing should be vested in the Aldermen and Common-Council, who are themselves but a part of the Common-Hall? Is it agreeable with the Measures either of Wisdom or Justice, That any should loose, but they who have power to bind? When Mr. John Richmond, who in 33 Hen. 8. had been chosen by the Common-Hall for one Sheriff, refused to serve upon a certain Pretence mentioned in the Records of the City, *Lib. 2. fol. 35. a.* the Commons in Common-Hall assembled, took Cognizance of it, and judging the Excuse and Plea on which he grounded his Refusal, to be insufficient, they required my Lord Mayor, who sat on the Court of *Hustings* with the Aldermen at the Election, to commit him to Prison, for Disobedience and Obstinacy, which he did accordingly; and afterwards, upon his application for a Common-Hall, which was called on the 12th of August, the said Common-Hall did admit him to a Fine, and then discharged him.

But whereas the Court of Aldermen insist upon, and alledg the Authority of an Act of Common-Council, made 7 Car. 1. whereby they pretend to be authorized and empowered to admit such to Fine whom they shall think meet, without the concurrence of the Commons; and that notwithstanding the Commons having both chosen such Person or Persons to the Office of Sheriff, and their continuing to adhere to the Election which they have made: I shall take liberty to unravel that Act, and shew, not only the Illegality of it, but what Fatal Mischiefs it is shapen and adapted to produce.

Whatsoever the Power of a Common-Council is, it remains still subordinate and subject unto, and may have its Acts both questioned and superseded by a Common-Hall: For the former being a Creature of the latter, and only instituted and erected by it, for the ease and conveniency of the Great Body of the Commonalty; it is not to be supposed but that the Free-men reserved a Jurisdiction unto themselves in their General Meetings, both of controlling and annulling such Acts as should be found to the Prejudice of the Corporation and Society. Accordingly, I not only find the Commons of London, in 20 Ed. 3. and 43 Ed. 3. giving Rise and Being unto a Common-Council, and both prescribing the Ends for which it was Instituted and Ordained, and adjusting the number of the Members that were to constitute it, together with the manner how they should be chosen and elected: But I further find, That the said Commons in Common-Hall assembled, 7 Ric. 2. did both redress those Inconveniences that had crept into the Management of Common-Councils, and prescribed such new Regulations as might render their Debates calm and sedate, and themselves more useful in time to come.

But then, if I observe, That the Act insisted on by the Court of Aldermen for their admitting Persons, after their being elected to Offices by the Commons, to discharge and free themselves from the said Offices by Fine, without the leave and consent of the Commons in Common-Hall, is inconsistent with the Charter, I may not only affirm it to be in itself null, but that they who strive to assert and uphold the Authority of it, are Enemies to the Rights and Liberties of the Citizens. All the Power and Authority that either the Court of Aldermen, or the Common-Council can pretend to, is vested in them for the Preservation of the Franchises granted to the Citizens, and not for the Subversion of them. To this they are sworn upon their admission into their respective Offices; and by every known and wilful invasion upon the Privileges settled by the Charter on the Free-men, they are guilty of the violation of their Oaths, and become perjured. And let me mind you that it was acknowledged by the late Town-Clerk, Mr. Wagstaffe, before a Committee of the House of

Commons, that this Act of Common-Council is disagreeable unto, and inconsistent with the Charter.

To which I add, that the forementioned Act in 7 Car. 1. and all other Acts of Common-Council preceding the 15 Car. 2. that are either derogatory from, inconsistent with, or Invasions upon the Rights of the Charter, are all cancell'd, or made void by the *Inspecimus* of the 15 Car. 2. For whereas that revives and confirms all the original Grants made to the City, re-investing the Freemen in all the Rights and Privileges conveyed to them in former Charters, it necessarily follows, That all such *By-Laws* as detract from, diminish, or subvert their Franchises, are thereby superseded, abrogated and annulled.

Yea, should this Act of Common-Council be acknowledged to be binding, and the Rule whereby the Court of Aldermen are to govern themselves in reference to the choice of Sheriffs, they would not only be clothed with a Power of oppressing and harassing the Citizens by often and unnecessary Attendance in Common Halls, but so far deprive the City of all Authority over its Members, that it would neither be in the power of the Commonalty, nor in the Court of Aldermen by that Act, to oblige any Man to take upon him, and to hold the Office of Sheriff.

I conclude, my Friend, with a great Authority applicable to our present Case, it is in the Celebrated Sir Edward Coke's 2d *Institutes*, pag. 559. to this effect.

'It was resolved by all the Judges of England, in 34 Hen. 6. That the King did an Error, when he made another Person Sheriff of Lincolnshire, than was chosen and presented to his Highness, after the effect of the Statute in such behalf made: And furthermore then seemed, that the King should have recourse to the three Persons that were chosen after the Tenor of the Statute, and make one of them Sheriff by Letters Patents. — And furthermore then seemeth, that if none of the said three Persons chosen be made, that then some other thrifty Mandwelling in a Foreign Shire, be intreated to occupy the said Office for this Year. And the next Year, in eschewing of such Inconveniences, That the Order of the Statute in such behalf made, be observed and kept.'

Which abovesaid unanimous Opinion, being the advised Resolution of two such Famous Chief Justices [Sir John Fortescue, and Sir John Prisor] and of all the Judges of England, and finding it in the Council-Book, I thought it fit to be published in such Words as it is there set down, as a sure and just Exposition of the Statutes concerning the making of Sheriffs.

Thus far that Learned Lord Chief Justice Coke.

Now (dear Sir) if all the Judges of England, had the Courage to tell the King that he did an Error, when he made another Person Sheriff of Lincolnshire, than was chosen according to Law, and to inform him how he ought to rectify it; and that Opinion was approved by an Entry in the Council-Book: May not we (without being represented as *Hot-Men*, and threatened that the Insolence of the Common-Hall must be curb'd) shew any Man or Body of Men their Fault, in breaking in upon our Constitution, by imposing Sheriffs upon us (as Sir John Moor did), or by discharging any whom we have elected without our consent in Common-Hall? I remain Yours most Sincerely R. H.

P. S.

My Friend, since the Post was gone, I met with this Passage of that Eminent and Learned Lawyer, Mr. Thomas Hunt, (Author of the Famous Postscript) in his Defence of the Charter of the City of London, pag. 35, 36. which I desire you to insert, if it be not too late: It is in these Words. It is not in the Power of a Common Council, whoever they be that are sworn of that Body, and however elected, inclined or disposed, to derogate by any Act of theirs from any of the City's Rights and Franchises. They are not the Body in whom the Rights and Franchises of the City are vested. The Stile of Purchase is, the Mayor and Commonalty of the City of London, and the most Modern Stile in use is, the Mayor, Commonalty and Citizens of the City of London. Their Beginning is of a much later date than the City's Charters of Corporation, they were first erected and have received several Alterations by Constitutions made in the Common-Hall. Their Business and Trust is to manage and defend, govern and protect, as Committees, the Rights of the City, and make By-Laws which are controllable notwithstanding, and sometimes have stood in need of Confirmation by the Common-Hall. — They can do nothing validly in Prejudice of the City's Rights and Franchises: And if they have any Contrivance limited under an Oath to be observed and kept, they attempt it.